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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9355 of 2007

Pravin Arvind Salvi ...Petitioner
V/s.
Konkan Railway Corporation
Limited & anr. ...Respondents

Mr.Jaiprakash Sawant for the Petitioner

CORAM : B.H.MARLAPALLE,J.
DATED : 19th December, 2007

P.C.

Heard Mr. Sawant, the Learned Counsel for the Petitioner who is aggrieved by the Order dated 9-12-2006 passed by the Central Government Industrial Tribunal No.2 at Mumbai in Reference No.CGIT-2/94 of 2001 thereby dismissing the said reference.

2. The following demand raised by the Petitioner was referred for adjudication in the above stated reference before the Industrial Tribunal.

> "Whether the action of the management of Chief Engineer (South) Konkan Railway Corporation Ltd. Ratnagiri in terminating the services of Shri Pravin Arvind Salvi, Watchman w.e.f. 30-6-1995 is

legal and justified? If not, to what relief the workman is entitled for?"

3. After the Petitioner workman filed his Statement of Claim before the Industrial Tribunal, the Corporation filed its written statement and stated that the Petitioner was employed as a watchman on purely temporary basis w.e.f. 5-5-1994 and he was attached to the Stores Department and he stopped reporting from 30-6-95. The Petitioner being a temporary workman engaged, no further steps were initiated as required under the Service Rules or the law to declare that he had voluntarily abandoned the service or to dismiss him on that count and more so when he was not a regular employee, stated the respondent employer.

4. During the course of adjudication the Petitioner had stepped in the witness box insupport of his case and Shri B.B.Nikam, Assistant Personnel Officer of the Respondent Corporation entered the witness box to depose on behalf of the Corporation. In his cross examination the workman admitted that he was not given any appointment letter by the Corporation, he was engaged on 5-5-94 and that he was informed at the time of engagement that the work was temporary and for a particular period. He also admitted that he had

received wages for the work done. Insupport of his allegations that he was being called upon to work for 11 hours continuously everyday, he stated that he had no documentary evidence insupport of the same and also admitted that he did not file any complaint to the Corporation for being asked to work beyond 8 hours' duty. He denied that he had stopped reporting for work from 30-6-1995. He also admitted that for the first time he raised a dispute about his illegal termination from service in January 2001 i.e. after about 6 years and approached the Assistant Labour Commissioner. He also admitted that he did not try for any other employment elsewhere during the period of his unemployment upto January 2001 and also admitted that he owned agriculture land.

5. On the other hand, Shri Nikam, Personnel Officer of the Respondent Corporation in his cross-examination admitted that the petitioner was paid wages directly by the Corporation, he was not given any appointment order and that he was paid for the work done. Mr.M.S.Vaikal, Supervisor had given oral message to the Petitioner to report for duty through his co-worker. He further stated that the petitioner never approached the Corporation at any time before he approached the Assistant Labour Commissioner, Goa in January 2001. He

also admitted that the Corporation did not send any memo to the workman calling upon him to report for duty.

6. The Industrial Tribunal, therefore, in the impugned Award noted that the workman was appointed on temporary basis and was paid on daily wages. He did not report for duty from 30-6-1995 and there was no evidence brought by him on record that he had approached the Corporation any time from 30-6-95 till he approached the Assistant Labour Commissioner. Admittedly from 1-7-95 till 14-1-2001, the petitioner did not raise any grievance regarding his alleged illegal termination of service and even if his service was continued from 5-5-94 till 30-6-95, he could not claim reinstatement as a matter of right. The Industrial Tribunal rightly observed that the behaviour of the workman clearly indicated that he had abandoned the temporary job. Insupport of these findings the Tribunal rightly relied upon the observations made by this Court in the case of **Bhimrao Rambhau Abhang V/s. Kohinoor Engineering Company 2005 II CLR page 952** and held that the procedure observed therein was not required to be followed in the present case as the workman was a temporary appointee without any appointment order and he was in employment on the basis of an oral order. I am, therefore, satisfied that the Industrial Tribunal did not commit

any error apparent on the face of record in dismissing the demand for reinstatement in the facts and circumstances of the instant case and consequently, there is no reason to cause interference in the impugned Award under Article 227 of the Constitution.

7. Hence, the Petition is rejected summarily.

[B.H.MARLAPALLE,J.]